

# Exhibit 183

*United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp. et al.*

Civil Action No. 07-10248-PBS

Exhibit to the September 22, 2009, Supplemental Declaration of James J. Fauci  
In Support of Plaintiff's Motion for Partial Summary Judgment and  
In Opposition to the Roxane Defendants' Motion For Partial Summary Judgment

**In The Matter Of:**

*THE STATE OF TEXAS v.  
DEY, INC., ET AL.*

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*EDWARD J. TUPA  
January 31, 2003*

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**Word Index included with this Min-U-Script®**

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[1] CAUSE NO. GV002327  
[2] THE STATE OF TEXAS ) IN THE DISTRICT COURT  
ex rel. )  
[3] VEN-A-CARE OF THE )  
FLORIDA KEYS, INC., )  
[4] Plaintiffs, )  
[5] VS. ) TRAVIS COUNTY, TEXAS  
[6] DEY, INC.; ROXANE )  
LABORATORIES, INC.; WARRICK )  
[7] PHARMACEUTICALS CORPORATION; )  
SCHERING-PLOUGH CORPORATION; )  
[8] SCHERING CORPORATION; )  
LIPHA, S.A.; MERCK-LIPHA, S.A.; )  
[9] MERCK, KGAA; AND EMD )  
PHARMACEUTICALS, INC., )  
[10] Defendants. ) 53RD JUDICIAL DISTRICT  
[11]

ORAL AND VIDEOTAPED DEPOSITION OF

EDWARD J. TUPA

JANUARY 31ST, 2003

ORAL AND VIDEOTAPED DEPOSITION OF

[12] EDWARD J. TUPA, produced as a witness at the instance  
[13]  
[14] JANUARY 31ST, 2003  
[15]  
[16] ORAL AND VIDEOTAPED DEPOSITION OF  
[17] EDWARD J. TUPA, produced as a witness at the instance  
[18] of the State of Texas and duly sworn, was taken in the  
[19] above-styled and numbered cause on the 31st of  
[20] January, 2003, from 8:28 a.m. to 3:53 p.m., before  
[21] Debra L. Sietsma, CSR in and for the State of Texas,  
[22] reported by machine shorthand, at 52 East Gay Street,  
[23] Columbus, Ohio, pursuant to the Texas Rules of Civil  
[24] Procedure and provisions as previously set forth.  
[25]

[1] APPEARANCES  
[2]  
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[18] - and -  
[19] MR. PAUL J. COVAL  
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[1] A: Yes.  
[2] Q: Okay. I'd like to draw your attention to  
[3] Tupa Exhibit No. 645.  
[4] A: Could I ask for a break, please?  
[5] Q: Certainly.  
[6] A: Thank you.  
[7] THE VIDEOGRAPHER: We're off the record  
[8] at 10:45 a.m.  
[9] (Recess from 10:45 to 10:48).  
[10] THE VIDEOGRAPHER: We're back on the  
[11] record at 10:48 a.m.  
[12] Q: (BY MS. O'KEEFFE) Mr. Tupa, with regard to  
[13] Tupa Exhibit No. 645, which I handed you just before  
[14] the break, the Bates label is ROX-04301 through 04303.  
[15] Does that appear to be a letter or a  
[16] memo from Mark Pope to you dated March 4th, 1996?  
[17] A: It does.  
[18] Q: And does this appear to be an update on his  
[19] tasks that he is performing as your consultant for the  
[20] launch of Ipratropium bromide?  
[21] A: It appears to be.  
[22] Q: With regard to the first page, the very  
[23] middle of the page which is titled "Apria Homecare."  
[24] Do you see that?  
[25] A: Yes.

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[1] Q: And I believe you indicated previously that  
[2] you're familiar with that entity?  
[3] A: Yes.  
[4] Q: Do you see the name "Bob (Ozzie) Osbakken,  
[5] Operations Manager," there?  
[6] A: I see that, yes.  
[7] Q: Do you know Mr. Osbakken?  
[8] A: I do not.  
[9] Q: You've never met him?  
[10] A: Not to my knowledge.  
[11] Q: With regard to the highlights down below  
[12] that, do you see the fifth bullet again, which  
[13] indicates that there's some consideration of a private  
[14] label situation that you described before?  
[15] A: It seems to be the opposite of what we saw  
[16] before but —  
[17] Q: Well, isn't it —  
[18] A: Now there's no interest.  
[19] Q: Yes, but it's the same type situation,  
[20] correct?  
[21] A: Yes, I understand that.  
[22] Q: But this customer felt differently about it;  
[23] is that correct?  
[24] A: That appears to be the case, yes.  
[25] Q: And it's because of, quote, "government

[1] issues," close quote?  
[2] A: Whatever that means, that's what it says,  
[3] yes.  
[4] Q: And the very bottom bullet point, could you  
[5] read that?  
[6] A: "Concerned about reimbursement issues."  
[7] Q: So, again, this is a customer that has  
[8] expressed a concern about Medicare or Medicaid  
[9] reimbursement; is that correct?  
[10] A: I would interpret that to be so, yes.  
[11] Q: That's all I have with that document, and at  
[12] this time I'd like to hand you what's been marked  
[13] Tupa Exhibit 646.  
[14] And would you agree, Mr. Tupa, that this  
[15] appears to be a fax and an attached — a fax memo and  
[16] an attachment sent to you from Mark Pope dated  
[17] March 28th, 1996?  
[18] A: Yes, it does.  
[19] Q: And does it appear that this is, again, a  
[20] follow-up on the tasks that Mr. Pope is performing in  
[21] his service as a consultant to you for the upcoming  
[22] launch of Ipratropium bromide?  
[23] A: I would interpret it that way, yes.  
[24] Q: The very last sentence on the cover page  
[25] says, "However, some are considering to do this

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[1] themselves, as the likelihood of a Medicare  
[2] reimbursement cut seems inevitable and survival may  
[3] well depend upon the ability to do so in the future."  
[4] Again, it appears that Mr. Pope has met  
[5] with a home health care company that is concerned  
[6] about Medicare reimbursement; is that correct?  
[7] A: Could you repeat the question?  
[8] MS. O'KEEFFE: Could you read it back,  
[9] please?  
[10] (The requested portion was read).  
[11] THE WITNESS: There is reference to  
[12] Medicare reimbursement in here, yes, as a concern.  
[13] Q: (BY MS. O'KEEFFE) And does the sentence just  
[14] before the one that I read refer to Rotech?  
[15] A: Yes, it does.  
[16] Q: And do you know whether or not Rotech is a  
[17] home care pharmacy?  
[18] A: My recollection is that Rotech was a home  
[19] care provider.  
[20] Q: And what is the difference between a home  
[21] care provider and a home care pharmacy?  
[22] A: My interpretation is that a home care  
[23] pharmacy — well, home care company, or agency,  
[24] provides services beyond just the product to the  
[25] patient in — in the patient's home setting. Home